

## § 1706.7

## 10 CFR Ch. XVII (1–12 Edition)

### § 1706.7 Procedures.

(a) *Pre-award disclosure and resolution of OCIs.* If a certificate under § 1706.6 indicates, or the Board otherwise learns, that actual or potential OCIs could be, or would appear to be, created by contract award to a particular offeror, the Board shall afford the affected offeror an opportunity to provide in writing all relevant facts bearing on the certificate. If the Board thereafter determines that an actual or potential OCI exists, one of the following actions shall ultimately be taken:

- (1) Disqualify the offeror;
- (2) Include in the contract appropriate terms and conditions which avoid the conflict, in which case no waiver is required; or
- (3) Make a finding that it is in the best interests of the Government to seek award of the contract under the waiver provisions of § 1706.8, and, where reasonably possible, include contract terms and conditions or take other measures which mitigate such conflicts.

(b) *Post-award disclosure and resolution of OCIs.* (1) If, after contract award, the contractor discovers actual or potential OCIs with respect to the contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement shall include a description of the action that the contractor has taken or proposes to avoid or mitigate such conflicts.

(2) If a disclosure under this section indicates, or the Board otherwise learns, that actual or potential OCIs exist, the Board may afford the contractor an opportunity to provide all relevant facts bearing upon the problem. If at any time the Board determines that an actual or potential OCI exists, one of the following actions shall ultimately be taken:

- (i) Terminate the contract, or, in the case of a task order contract, terminate the particular task;
- (ii) Insist on appropriate contract terms and conditions which avoid the OCIs, in which case no waiver is required; or
- (iii) Make a finding that it is in the best interests of the Government to permit the contractor to continue to perform the contract (or task) under

the waiver provisions of § 1706.8, and, where reasonably possible, insist on appropriate contract terms and conditions or take other measures which mitigate the OCIs.

(c) *Task order contracts.* (1) Because a task order contract generally entails a broad scope of work, apparent successful offerors shall be required to identify in their certificates filed in accordance with § 1706.6 any actual or potential OCIs that come within the full scope of the contract. The Board may decline to award a task order contract to an offeror based upon such information or it may decline to approve performance of a particular task by the contractor if an actual or potential OCI is subsequently identified with respect to that particular task. The Board may also take the other actions identified in § 1706.7(a) to avoid or mitigate such conflicts.

(2) Contractors performing task order contracts for the Board shall disclose to the contracting officer any new work for others they propose to undertake that may present an actual or potential OCI with regard to the performance of any work under the full scope of the Board contract. Such disclosure shall be made at least 15 days prior to the submission of a bid or proposal for the new work. The disclosure shall include the statement of work and any other information necessary to describe fully the proposed work and contemplated relationship.

(3) If the Board has issued a task order or a letter request for proposal under the contract with a contractor who has disclosed to the contracting officer that it proposes to undertake new work for persons other than the Board as described in § 1706.7(c)(2), for services in the same technical area and/or at the same defense nuclear facility that is the subject of the proposed new work (including overlap based upon generic work performed for others by the contractor), the Board shall inform the contractor that entering into a contract for the new work may result in termination by the Board of the task order contract, if the Board determines that such work would give rise to an OCI and the Board does not grant a waiver.

## Defense Nuclear Fac. Safety Board

## § 1706.8

(d) *Decisions on OCIs.* The contracting officer shall make recommendations to the General manager regarding disqualification or actions to be taken by the Board to avoid or mitigate any actual or potential OCI.

(1) The General Manager shall have the authority to approve, modify, or disapprove such recommendations regarding avoidance of an actual or potential OCI. If an offeror or contractor disagrees with the actions approved by the General Manager and requests review of the action, the Chairman shall make the decision on the actions to be taken by the Board.

(2) Any recommended action respecting the best interests of the Government and mitigation measures to be taken with respect to an actual or potential OCI must be approved by the Chairman in conjunction with the decision to grant a waiver pursuant to §1706.8, and any recommended action to terminate a contract or a particular task on account of an actual or potential OCI must be approved by the Chairman.

(3) Decisions on OCIs by the General Manager or the Chairman shall be made with the advice of the Office of the General Counsel.

[57 FR 44652, Sept. 29, 1992; 58 FR 13684, Mar. 12, 1993]

### § 1706.8 Waiver.

(a) *Waiver of OCIs.* The need for a waiver of any OCI in connection with the award or continuation of specific contracts may be identified either by the contracting officer for the Board or other Board employee or by a written request filed by an offeror or contractor with the contracting officer. The request may be combined with the certificate or disclosure required under §§1706.6 or 1706.7, or with additional statements filed under §1706.7 regarding matters raised in the certificate or disclosure. The contracting officer shall review all of the relevant facts brought to his attention and shall bring the matter to the General Manager, who shall make a written recommendation to the Chairman of the Board regarding whether a waiver should be granted for a contract award or for continuation of an existing contract.

(b) *Criteria for Waiver of OCIs.* (1) The Chairman is authorized to waive any OCI (and the corresponding provision of §1706.5 where applicable) upon a determination that awarding or extending the particular contract, or not terminating the particular contract, would be in the best interests of the Government. Issuance of a waiver shall ordinarily be limited to those situations in which:

(i) The work to be performed under contract is vital to the Board program;

(ii) The work cannot be satisfactorily performed except by a contractor or offeror whose interests give rise to a question of OCI; and

(iii) Contractual and/or technical review and supervision methods can be employed by the Board to mitigate the conflict.

(2) The Chairman is also authorized to waive any OCI (and the corresponding provision of §1706.5 where applicable), without regard to the foregoing factors, if the Chairman determines, notwithstanding the existence of the OCI, that it is in best interests of the Government to award or extend the particular contract, or not to terminate it, without compliance with §1706.8(b)(1).

(c) *Waiver of Rules or Procedures.* The Chairman is also authorized to waive any rules or procedures contained in this part upon a determination that application of the rules or procedures in a particular situation would not be in the best interests of the Government. Any request for such a waiver must be in writing and shall describe the basis for the waiver.

(d) *Office of General Counsel.* Waivers of OCIs or of any rule or procedure contained in this part shall be made after consultation with the Office of General Counsel.

(e) *Federal Register.* Except as otherwise provided in §1706.8(c), notice of each waiver granted under this section shall be published in the FEDERAL REGISTER with an explanation of the basis for the waiver. In the discretion of the Board, notices of instances of avoidance of OCIs may also be published in the FEDERAL REGISTER.